

Congress of the United States

Washington, DC 20515

October 26, 2022

The Honorable Deb Haaland
Secretary
Department of the Interior
1849 C St. SW
Washington, DC 20240

Dear Secretary Haaland,

We are concerned by the U.S. Fish and Wildlife Service’s (FWS) decision to rescind the rule titled “Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat” published on December 16, 2020, which would remove the regulatory definition of “habitat” established by that rule. This action demonstrates a recurring pattern of partisan rulemaking by FWS and creates uncertainty for our farmers, ranchers, foresters, miners, tribal and indigenous communities, and others.

As you know, the FWS proposed a rule in September 2020 to provide a set definition for “habitat” as it applies to the designation of critical habitat under the Endangered Species Act (ESA). The final rule issued in December 2020 defined “habitat” and extensively addressed the legal and policy basis for the definition. Additionally, the Supreme Court ruled that Section 4 of the ESA “does not authorize the Secretary to designate the area as critical habitat unless it is also habitat for the species.”¹ Taken together, the 2020 rule and its Supreme Court interpretation correctly established a regulatory definition of “habitat” that met the goal of the FWS to “provide transparency, clarity, and consistency for stakeholders.”²

Unfortunately, the FWS recently finalized a rule that simply rescinds the 2020 definition with no additional guidance and returns the definition of “habitat” to a “case-by-case” review. In doing so, the FWS fails to establish clear guidance for stakeholders and ignores the Supreme Court’s ruling.

The FWS’ actions appear to be motivated by politics and will impact the entire country. We should instead be committed to protecting our producers and other land users from federal overreach and confusing regulations so that they may continue to ensure our nation’s food security, bolster the domestic energy supply, and manage land according to the best available science.

We request that you respond to this letter by January 3, 2023 with information about the scientific and legal basis upon which FWS rescinded the 2020 rule. Additionally, we ask that you include information about how FWS intends to implement new critical habitat standards. Thank you for your attention to our concerns.

Sincerely,

¹ Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv., 139 S. Ct. 361, 368 (2018) (emphasis in original).

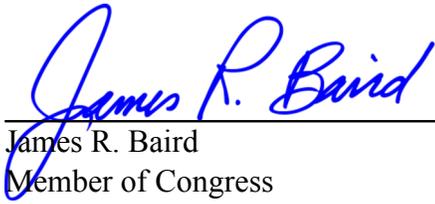
² 85 Fed. Reg. 47,333, 47,334 (Aug. 5, 2020) (proposed rule); 85 Fed. Reg. 81,411, 81,418 (Dec. 16, 2020) (final rule).



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